

FILED  
TULARE COUNTY SUPERIOR COURT  
VISALIA DIVISION

JAN 14 2019

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10 MB EQUIPMENT FINANCE, LLC

11 TULARE COUNTY SUPERIOR COURT  
12 STATE OF CALIFORNIA, VISALIA DIVISION

13 IN Re SEARCH WARRANT #013487

Case No. VSW013487

14 YORAI BENZEEVI

15 Moving Party,

16 v.

17 SUPERIOR COURT OF THE COUNTY  
18 OF TULARE,

19 Respondent,

20 TULARE COUNTY DISTRICT  
21 ATTORNEY,

22 Real Party in Interest.

**REAL PARTIES-IN-INTEREST MB  
FINANCIAL BANK, N.A. AND MB  
EQUIPMENT FINANCE, LLC'S NOTICE OF  
MOTION AND MOTION TO INTERVENE  
FOR LIMITED PURPOSE; MEMORANDUM  
OF POINTS AND AUTHORITIES**

[Filed concurrently with [PROPOSED] Order]

Date: February 15, 2019

Time: 1:30 P.M.

Dept. 13

Judge: Hon. John P. Bianco

1           **TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:**

2           PLEASE TAKE NOTICE that on **Friday, February 15, 2019**, at **1:30 p.m.** in  
3           **Department 13** of the Tulare County Superior Court, Visalia Division, located at 221 S. Mooney  
4           Blvd, Visalia, California 93291, Real Parties-In-Interest MB Financial Bank, N.A. and MB  
5           Equipment Finance, LLC (collectively "MB") will and hereby does move for an order granting  
6           leave for MB to intervene into the instant matter as a real party-in-interest ("RPI") and victim of  
7           criminal acts perpetrated by Yorai Benzeevi ("Benzeevi"). MB brings this motion pursuant to the  
8           Court's inherent authority and broad discretion in permitting intervention, and seeks leave to  
9           intervene for the limited purposes of representing MB's property interests in these proceedings,  
10          including an expected claim to funds seized or otherwise recovered in this action. MB's motion  
11          is based upon the supporting Memorandum of Points and Authorities, the files and records of the  
12          court in this matter, and upon any other evidence or argument the Court may consider at the  
13          hearing on this motion.

14          Dated: January 14, 2019

KUTAK ROCK LLP

15  
16          By: 

17          Jacob Song  
18          Attorneys for Proposed Intervenors  
19          MB FINANCIAL BANK, N.A.,  
20          MB EQUIPMENT FINANCE, LLC

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Real Parties-In-Interest MB Financial Bank, N.A. ("MBF") and MB Equipment Finance,  
4 LLC<sup>1</sup> ("MB Equipment"; collectively "MB") seek to intervene in the instant action as innocent  
5 victims and real parties-in-interest ("RPI") in certain funds seized from Yorai Benzeevi  
6 ("Benzeevi") in connection with criminal and otherwise unlawful conduct that resulted in the  
7 theft of \$3 million from MB. To date, funds in excess of \$900,000.00 have been seized from  
8 accounts held by Benzeevi pursuant to Search Warrant #013487, which are directly traceable to  
9 the criminal acts perpetrated by Benzeevi. These funds were wrongfully obtained from MB as a  
10 result of the acts perpetrated by Benzeevi, and MB expects to file a claim for such funds pursuant  
11 to Pen Code §§ 1408, 1410. Thus, MB has a direct and immediate property interest in this action  
12 vis-à-vis the seized funds. MB's intervention will not enlarge the issues in this expansive  
13 investigation, as MB's interests are limited to its losses incurred in connection with specific  
14 criminal acts already alleged against Benzeevi. Finally, the interests of justice outweigh  
15 opposition, if any, by existing parties<sup>2</sup>.

16  
17 **II. RELEVANT FACTUAL BACKGROUND**

18 On or about October 3, 2018, MB was notified by the Tulare County District Attorney<sup>3</sup>  
19 ("Tulare DA") that certain seized funds of Benzeevi were traced back to a transaction amounting  
20 to fraud and theft perpetrated by Benzeevi on MB. Those seized funds amount to stolen and/or  
21 otherwise misappropriated monies directly traceable to underlying transactions between Benzeevi  
22 and MB, wherein Benzeevi defrauded MB. The following factual background has been gleaned  
23 from available public records relating to the search warrant executed in this matter, and are made  
24

25 <sup>1</sup> MB Equipment is the successor by merger to Celtic Leasing Corp. ("Celtic"). Benzeevi's criminal acts resulted in  
26 Celtic being defrauded of funds totaling at least \$3 million.

27 <sup>2</sup> MB recognizes that it references a civil statute, Code Civ. Proc. § 387, in this criminal matter. Nevertheless, under  
28 the Court's inherent authority and broad discretion under the intervention statute, MB respectfully requests that the  
Court apply the civil intervention statute to this matter.

<sup>3</sup> MB has been advised of the Tulare DA's Supplement filed in response to Benzeevi's motion for return of seized  
property and related evidentiary hearing. As a RPI at least with respect to the seized funds, MB opposes Benzeevi's  
motion and joins in the Tulare DA's response and supplement to response.

1 on information and belief to the extent necessary at this time.

2 Benzeevi, through his company Health Care Conglomerate Associates ("HCCA"), entered  
3 into a Management Services Agreement ("MSA") with Tulare Regional Medical Center  
4 ("TRMC"). The MSA granted Benzeevi and HCCA power and authority to control TRMC bank  
5 accounts and TRMC assets, though TRMC retained ownership of said accounts and assets.  
6 HCCA and Benzeevi entered into a fiduciary role with respect to TRMC under the MSA.  
7 According to the Tulare DA, at some point, TRMC terminated Benzeevi and HCCA's authority  
8 to obtain loans on behalf of TRMC without Celtic's knowledge.

9 In or about late-July 2017, Celtic contacted HCCA regarding financing needs for TRMC.  
10 Benzeevi informed Celtic of HCCA and TRMC's financing needs. The crux of the transaction  
11 involved TRMC selling essential hospital equipment to Celtic for a total of \$3 million, which  
12 Celtic would then lease back to TRMC for a term of three years at a cost of approximately \$3  
13 million. At the end of the lease term, Celtic would retain ownership of the equipment. Benzeevi  
14 pushed for the sale and leaseback transaction to be completed quickly, and communicated to  
15 Celtic that time was of the essence. Celtic eventually consented to an immediate transaction for  
16 \$3 million in financing, with the understanding that a subsequent transaction for an additional \$7  
17 million in financing would follow.

18 On August 31, 2017, Celtic wired \$3 million to an account named "Tulare Asset  
19 Management" ("TAM"), which, contrary to Celtic's belief, was entirely owned and controlled by  
20 Benzeevi. In order to facilitate the transaction, HCCA and Benzeevi submitted financial  
21 statements to Celtic—financial statements of Benzeevi and HCCA now revealed to have been  
22 materially false and/or fraudulent. In addition to those materially false financial statements, Alan  
23 Germany—then CFO of TRMC—made a series of material misrepresentations to Celtic regarding  
24 TRMC's financial condition and ability to satisfy the terms of the sale and leaseback agreement.  
25 The theft of funds from Celtic can be directly traced to the fraudulent misrepresentations of  
26 Benzeevi and Alan Germany.

27 Significantly, Germany and Benzeevi also misrepresented who would receive the \$3  
28 million in funds. Effectively, Benzeevi and Germany sold assets owned by TRMC, and had the

1 \$3 million wired into the TAM account owned and controlled by Benzeevi—not TRMC. When  
2 Celtic inquired whether the TAM account was the same as an account held by TRMC, Germany  
3 misrepresented that the TAM account was the same as an account held by TRMC—another  
4 materially false statement. Had Celtic been apprised of who would receive the funds, the  
5 transaction would not have been completed.

6  
7 **A. Seized Funds Traceable to the Celtic Transaction**

8 The Tulare DA's Supplement specifically details the tracing of the Celtic transaction  
9 funds to Benzeevi's seized TAM account. The following summarized the Tulare DA's tracing  
10 timeline:

- 11 • Benzeeiv's TAM account previously had \$56,000.
- 12 • August 31, 2017: Benzeevi steals \$3 million from Celtic as part of his criminal  
13 scheme to defraud Celtic, which is deposited into his TAM account.
- 14 • September 7, 2017: \$133,563.38 was wired from the TAM account into TRMC's  
15 Bank of Sierra account. A check for the same amount was issued as Benzeevi and  
16 Germany's pursuit of a transaction with an entity called Leasing Innovations.
- 17 • September 10 and 11, 2017: \$499,727.93 was transferred to one of Benzeevi's  
18 HCCA Chase Bank accounts; \$499,727.93 check paid out from Benzeevi's HCCA  
19 Chase Bank account to Baker Hostetler
- 20 • September 13, 2017: Benzeevi transfers \$2.4 million from the TAM account to his  
21 HCCA Chase Bank account. That HCCA Chase Bank account previously held  
22 \$131,875.77.
- 23 • September 14, 2017: \$10,000 cashier's check purchased from Benzeevi's HCCA  
24 Chase Bank account payable to Baker Hostetler.
- 25 • September 18, 2017: Benzeevi issues a check for \$2.4 million from the HCCA  
26 Chase Bank account; that check is deposited into the personal account owned by  
27 Benzeevi's wife, Amy Benzeevi.

28 At the time funds were seized, the balance on Benzeevi's account was \$937,931.04. The

1 Tulare DA's Supplement and citations to relevant and controlling law make clear that the seized  
2 funds are directly traceable to the Celtic transaction wherein Celtic was defrauded. Benzeevi, as  
3 perpetrator of the criminal acts, is not entitled to the seized funds as a matter of law. Celtic, as an  
4 innocent victim of Benzeevi's criminal acts, is entitled to receive the seized funds pursuant to  
5 Pen. Code §§ 1408, 1410.

6  
7 **III. THE COURT'S INHERENT AUTHORITY COUPLED WITH GUIDANCE FROM**  
8 **RELEVANT STATUTES PERMITS INTERVENTION**

9 In criminal matters, courts have inherent supervisory and administrative powers that allow  
10 for the creation of new procedures in the absence of statutory direction, as long as such  
11 procedures are suitable and within the spirit of the code. *See People v. Avila*, 191 Cal.App.4th  
12 717, 722 (2011). Attendant to this inherent authority, courts are vested with "...a constitutionally  
13 conferred, inherent authority to 'create new forms of procedures' in the gaps left unaddressed by  
14 statutes and the rules of court." *People v. Lujan*, 211 Cal.App.4th 1499, 1508 (2012).

15 Courts have broad discretion in determining whether to permit intervention under Code  
16 Civ. Proc. § 387.<sup>4</sup> *See U.S. Ecology, Inc. v. State of Calif.*, 92 Cal.App.4th 113, 139-140 (2001).  
17 Courts interpret Section 387 to hold that intervention is proper where (1) the nonparty has a direct  
18 and immediate interest in the litigation, (2) intervention will not enlarge the issues in the case, and  
19 (3) the reasons for intervention outweigh any opposition by the existing parties. *See Reliance*  
20 *Ins. Co. v. Sup. Ct. (Wells)*, 84 Cal.App.4th 383, 386 (2000). In essence, a nonparty seeking to  
21 intervene must stand to lose or gain by direct operation of a potential judgment. *See City &*  
22 *County of San Francisco v. State of Calif.*, 128 Cal.App.4th 1030, 1037 (2005). Ultimately,  
23 Section 387 must be construed liberally in favor of intervention. *See Simpson Redwood Co. v.*  
24 *State of Calif.*, 196 Cal.App.3d 1192, 1201 (1987). That liberal construction coupled with this  
25 Court's broad discretion generally militates in favor of granting leave to intervene.

26 MB further submits that this Court has, within its discretion, the ability to permit  
27 intervention where appropriate in matters similar to the one before this Court. MB submits that

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<sup>4</sup> MB uses the Civil Code for reference and standard purposes because the California criminal statutes do not contain a specific provision regarding intervention.

1 intervention is appropriate here because the stolen property belongs to MB, and MB should be  
2 permitted to protect its right to that property through intervention and participation in these  
3 proceedings. Certain Penal Code statutes provide authority for the return of stolen property to  
4 Celtic.

5 Pen. Code § 1408 states the following:

6 On the application of the owner and on satisfactory proof of his ownership  
7 of the property, after reasonable notice and opportunity to be heard has  
8 been given to the person from whom custody of the property was taken  
9 and any other person as required by the magistrate, the magistrate before  
10 whom the complaint is laid, or who examines the charge against the  
11 person accused of stealing or embezzling it, shall order it to be delivered,  
12 without prejudice to the state, to the owner, on his paying the necessary  
13 expenses incurred in its preservation, to be certified by the magistrate. The  
14 order entitles the owner to demand and receive the property.

15 Pen. Code § 1410 states the following:

16 If the property stolen or embezzled has not been delivered to the owner,  
17 the court before which a trial is had for stealing or embezzling it, upon the  
18 application of the owner to the court and on proof of his title, after  
19 reasonable notice and opportunity to be heard has been given to the person  
20 from whom custody of the property was taken and any other person as  
21 required by the court, may order it to be restored to the owner without  
22 prejudice to the state.

23 In accordance with and as may be limited by applicable law, MB intends to make a formal  
24 claim for the stolen property to the District Attorney and to the Court.

#### 25 IV. ARGUMENT

##### 26 1. MB Submits that Intervention Should be Granted

27 This Court's constitutionally conferred, inherent authority expressly permits application of  
28 the civil intervention statute to this matter. Section 387(a), the civil statute allowing for  
intervention, provides that, "any person, who has an interest in the matter in litigation, or in the  
success of either of the parties, or an interest against both, may intervene in the action or  
proceeding." Intervention promotes fairness by involving all parties potentially affected by a  
judgment. See *Simpson Redwood Co.*, *supra*, 196 Cal.App.3d at 1199. Where the proposed  
intervenor has a direct interest in the underlying matter, intervention will not enlarge the issues,  
and the reasons for intervention outweigh opposition by parties present, leave to intervene should

1 be granted. *See Reliance Ins. Co., supra*, 84 Cal.App.4th at 386. MB submits that similar  
2 considerations should be applied in the discretion of the Court to permit intervention by MB in  
3 the matter pending before the Court.

4 As outlined in the Tulare DA's Supplement and above, MB has a clear, direct property  
5 interest in the seized funds totaling \$937,931.04. Those funds are directly traceable to the \$3  
6 million wire from Celtic, wherein Celtic was repeatedly and prejudicially misled by HCCA,  
7 Benzeevi, and Germany. MB's limited participation in the proceedings will not enlarge the  
8 issues; indeed, MB will likely be a witness in any proceeding that addresses the seizure of these  
9 funds. In this instance, MB seeks only limited intervention to participate in these criminal  
10 proceedings as an innocent victim of Benzeevi's underlying criminal acts and RPI entitled to  
11 funds seized from Benzeevi and to protect its interest in the funds. Since the funds have already  
12 been seized, disposition of the seized funds stands as the next step pursuant to Pen. Code §§ 1408,  
13 1410. Upon being permitted to participate in these proceedings as a RPI, MB intends to submit  
14 an application to the Court pursuant to Sections 1408, 1410 for return of stolen property (i.e., the  
15 seized funds).

16 Finally, the interests of justice militate in favor of granting leave for MB to participate in  
17 these proceedings. Again, based on demonstrable entitlement to the seized funds and  
18 MB/Celtic's status as an innocent victim of Benzeevi's criminal acts, MB should be permitted  
19 limited participation in these proceedings in order to protect its property interests in the seized  
20 funds, among other possible assets seized or recovered in the future.

21 2. In the Alternative, Intervention under Grounds Similar to Section 387(b)  
22 Should be Granted

23 Section 387(b) provides an alternative path to intervention and states the following in  
24 relevant part:

25 ...the person seeking intervention claims an interest relating to the  
26 property or transaction which is the subject of the action and that person is  
27 so situated that the disposition of the action may as a practical matter  
28 impair or impede that person's ability to protect that interest, unless that  
person's interest is adequately represented by existing parties, the court  
shall, upon timely application, permit that person to intervene.



1 In deciding whether to grant leave to intervene under subsection (b), courts look to  
2 whether the existing parties adequately represent the intervenor's interest in the action. *Hodge v.*  
3 *Kirkpatrick Development, Inc.*, 130 Cal.App.4th 540, 556 (2005). Here, MB satisfies the  
4 requirements under subsection (b). MB has a property interest in the seized funds, and the  
5 disposition of this action may impair or impede MB's ability to protect its interests unless the  
6 Court grants limited intervention. Neither the Tulare DA nor Benzeevi have property interests in  
7 the seized funds; thus, the parties presently in the action cannot adequately represent MB's  
8 property interests in the seized funds. Accordingly, limited intervention is warranted and  
9 necessary to safeguard MB's interests in the seized funds. In the alternative, MB respectfully  
10 requests that the Court grant limited intervention in this action under subsection (b).

11  
12 **V. CONCLUSION**

13 For the foregoing reasons, MB respectfully requests that the Court grant leave for limited  
14 purpose intervention in this action. Doing so will allow MB to protect its interest in seized funds,  
15 and will allow for efficient adjudication and disposition by the Court of the seized funds under  
16 Pen. Code §§ 1408, 1410, which will serve to mitigate the harm inflicted upon MB by Benzeevi's  
17 criminal actions.

18 Dated: January 14, 2019

KUTAK ROCK LLP

19  
20 By: 

21 Jacob Song  
22 Attorneys for Proposed Intervenor  
23 MB FINANCIAL BANK, N.A.,  
24 MB EQUIPMENT FINANCE, LLC  
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**PROOF OF SERVICE**

*In re Search Warrant No. 013487 Executed August 22, 2018 at JPMorgan Chase Bank v.  
Superior Court of the County of Tulare*

Superior Court of the State of California, County of Tulare, Visalia Division

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the City of Irvine in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 5 Park Plaza, Suite 1500, Irvine, California 92614-8595.

On **January 14, 2019**, I served on all interested parties as identified on the below mailing list the following document(s) described as:

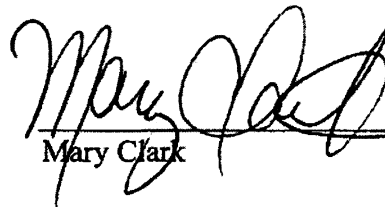
**REAL PARTIES-IN-INTEREST MB FINANCIAL BANK, N.A. AND MB EQUIPMENT  
FINANCE, LLC'S NOTICE OF MOTION AND MOTION TO INTERVENE FOR  
LIMITED PURPOSE; MEMORANDUM OF POINTS AND AUTHORITIES**

☒ (BY MAIL, 1013a, 2015.5 C.C.P.) I deposited such envelope in the mail at Irvine, California. The envelope was mailed with postage thereon fully prepaid. I am readily familiar with the firm's practice for collection and processing correspondence for mailing. Under that practice, this(these) document(s) will be deposited with the U.S. Postal Service on this date with postage thereon fully prepaid at Irvine, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

**SEE ATTACHED SERVICE LIST**

☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on **January 14, 2019**, at Irvine, California.

  
\_\_\_\_\_  
Mary Clark

**SERVICE LIST**

*In re Search Warrant No. 013487 Executed August 22, 2018 at JPMorgan Chase Bank v.  
Superior Court of the County of Tulare*

Superior Court of the State of California, County of Tulare, Visalia Division

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